Filed 4/9/13 In re T.S. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re T.S. et al., Persons Coming Under the Juvenile Court Law.	
HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, **Plaintiff and Respondent,** **v.** **TERRI S. et al.,** **Defendants and Appellants.**	**A134553** **(Humboldt County Super. Ct. No. JV110140)**

Terri S. (Mother) and Juan C. (Father) (collectively, the parents) appeal from a juvenile court's disposition order removing their minor sons, T.S. and F.S., from their custody. They contend the evidence is insufficient to support the findings required by Welfare and Institutions Code section 361.7[1] before foster placement of an Indian child, namely, that: (1) "the continued custody of the child by the parent . . . is likely to result in serious emotional or physical damage to the child"; and (2) "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." Father also challenges the case plan, contending it was not tailored to his needs. We reject these contentions and affirm the court's order.

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1 All undesignated statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

Detention of the Children

On September 17, 2011, at approximately 7:30 p.m., a law enforcement officer was dispatched to the parents' home in response to a call from a neighbor, who reported that Mother had burst into her apartment, hysterical, intoxicated, and wearing only a t-shirt and underwear, then had returned to her own apartment and was screaming at Father. When the officer arrived, the neighbor told him she had seen Father dragging Mother into the apartment by her hands and feet. The officer could hear crying and yelling inside the apartment. Father eventually opened the door and was detained. Inside the apartment, the officer found Mother sitting on the floor with T.S. (age 3) and F.S. (age 22 months) (the children), who were both crying hysterically and wearing only diapers. The officer could smell a strong odor of alcohol on Mother's person and noted that she was slurring her words, had difficulty answering questions, and was unable to stand unassisted. The officer observed a bruise on her right cheek.

Neighbors told the officer the parents regularly drank and argued; it was " 'normal' " to hear them yelling at each other; and "it sounded like they were beating the hell out of each other."

The officer placed Father under arrest on charges of domestic violence, false imprisonment, and child endangerment. He arrested Mother for child endangerment and violation of a probation condition requiring her to abstain from alcohol. The children were taken into protective custody.

On September 20, 2011, the Humboldt County Department of Health and Human Services (the Department) filed a dependency petition based on the parents' arrests, alleging their failure to protect the children from Mother's substance abuse and the parents' violent relationship placed the children at substantial risk of abuse and neglect and a risk of harm. (§ 300, subd. (b).)

The juvenile court held a detention hearing the next day. The report for this hearing indicates Mother had an April 2010 referral for general neglect based on her arrest for public intoxication. The allegations were substantiated, and the children were

left in Father's care. Shortly thereafter, Mother was convicted of obstruction of a public officer and cruelty to a child under circumstances likely to produce great bodily harm or death (§ 273a, subd. (a)). In November 2010, the parents had another referral for emotional abuse based on allegations of domestic violence, which was deemed unfounded.

The detention report also indicates that Father had a July 1991 misdemeanor conviction for assault with a deadly weapon other than a firearm.

At the detention hearing, Mother submitted form ICWA-020 (Indian Child Welfare Act (ICWA), Parental Notification of Indian Status), stating she and the children were members of or eligible for membership in the Iñupiaq Eskimo tribe in Alaska.[2]

The juvenile court declared Father the children's presumed father and ordered their continued detention. The court ordered services for both parents, including drug monitoring and random drug screens, a substance abuse assessment, domestic violence counseling, and supervised visitation with the children.

The Jurisdiction Hearing

On October 11, 2011, the juvenile court held a jurisdiction hearing. The report for this hearing sets forth details of prior incidents of intoxication and domestic violence, including an April 2010 incident in which Mother was seen carrying one of her children on her back, pushing the other in a stroller, and "falling down." She knocked the stroller over twice, causing F.S. to fall to the ground, then fell backward, causing T.S. to fall. Both children were crying. Mother claimed she tripped, but the responding officer smelled a strong odor of alcohol and noticed she had an unsteady gait, red, watery eyes, and "slow thick slurred speech." As Mother was too intoxicated to care for the children, the officer released them to Father and placed Mother under arrest. As a result of this arrest, Mother was subject to a probation condition requiring her to "abstain from the use of alcoholic beverages."

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[2] Mother identified the tribe as "Nana Regional Corporation (Iñupiaq-Eskimo)." Father later submitted an ICWA-020 form stating he had no Indian ancestry, but the children were members of this tribe.

In September 2010, an officer was dispatched to the parents' home regarding a verbal dispute. The officer noted Mother had a slurred voice and an odor of alcohol, and was unable to articulate information due to her intoxication.

In November 2010, an officer was dispatched to the parents' home for a report of domestic violence. At that time, Mother appeared to be "heavily intoxicated;" she was with a neighbor, who said Mother had come to her apartment and stated Father had punched her. Mother had blood coming from her nose and a cut on her bottom lip, and acknowledged that Father had hit her. Father claimed he awoke to a "thump" and a baby crying and found Mother where she had fallen; he said he began yelling at her because she was intoxicated and she ran out.

Law enforcement made other domestic violence calls to the parents' home on May 25, 2011, and July 19, 2011.

The jurisdiction report indicates Mother was injured on multiple occasions but it was unclear whether her injuries were due to domestic violence or her substance abuse.

Two days after the September 17, 2011 incident, Mother asked a social worker to give Father a message—"that she loves him, she wants him to come back and she's sorry." Father acknowledged that he and Mother disagreed at times but denied using violence; he said Mother stumbled, so it may have appeared that he was dragging her from the neighbor's house, but he "just wanted her to be home." He said Mother would fight when she was drinking.

The jurisdiction report states that the Department sent ICWA-030 forms (Notice of Child Custody Proceeding for Indian Child) to groups of Iñupiaq Eskimo tribes.[3]

The juvenile court sustained the petition, found the children were described by section 300, subdivision (b), and set the case for disposition.

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[3] The record shows the Department mailed this form to the Iñupiaq Eskimo Tribal Chairman on October 6, 2011, and that it was received on October 14, 2011.

The Disposition Reports and the Tribe's Intervention

On November 2, 2011, the Department filed its disposition report, recommending the children be declared dependents of the juvenile court and returned to the parents under a family maintenance plan. This report describes the parents as "very loving and involved in their children's upbringing." During supervised visits, they had shown "appropriate parenting strategies and loving attitudes to the children." The report indicates that the parents had made adequate progress toward alleviating or mitigating the causes necessitating intervention. Mother "was quick to recognize her substance abuse" and had stated her willingness to participate in a treatment program.[4] She had been referred to the Healthy Moms program and had begun attending. She also continued to attend M.E.N.D./ W.E.N.D. Father had been referred to the Man's Alternatives to Violence program. Both parents had received substance abuse assessments and agreed to participate in services, including substance abuse treatment, anger management counseling, and parenting training, as well as M.E.N.D./W.E.N.D. The report states that the parents were losing their home due to past incidents of domestic violence. The Department referred them to the Eureka Housing Authority to assist them in finding housing.

Under the recommended case plan, Mother was to remain drug-free and comply with all required drug tests; participate in outpatient services once a week for her substance abuse and follow the treatment recommendations; attend A.A. meetings as directed; and complete the M.E.N.D./ W.E.N.D. program. Father was to receive a domestic violence assessment and follow the provider's recommendation. Both parents were to complete parenting classes and refrain from verbally, emotionally, physically, or sexually abusive or threatening behavior.

The disposition report indicates that T.S. was found to have behavioral and developmental delays. He and F.S. were involved in a Head Start program.

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[4] Mother told the social worker "that she is not successful with substance abuse meetings and . . . these make her drink more."

Thereafter, the Department learned the parents had separated and lost their housing, and Mother had moved in with another man. Two days after filing its disposition report, the Department requested a continuance of the disposition hearing to allow more time to investigate, and the court granted this request.

On November 8, 2011, the Native Village of Kiana, Alaska filed an affidavit of tribal membership and designated a tribal representative, indicating it was the children's tribe under ICWA. A week later, the tribe formally intervened in the proceedings.

On November 23, 2011, the Department submitted an addendum report, discussing a November 15 incident involving Father. On the telephone with the social worker, Father was "hysterical," stating he had not been allowed to visit his children that morning and thought people were lying to him. He became angry and made derogatory statements to the social worker. He said when he saw his children the next day, it would " 'be the last day.' " He angrily stated, " 'I see, [Mother] is against me, well I know what to do.' " At times, he cried hysterically, screaming, " 'I want my babies; please I will love you forever,' " and began saying, " 'I want it to end.' " The social worker handed the phone to a mental health clinician, who said Father exhibited pressured speech and disorganized, paranoid thinking; "became very focused on race"; said " 'bad things would happen if he didn't see his kids' "; and threatened his own safety. The clinician requested a welfare check from law enforcement. When an officer responded, Father admitted he had been drinking " 'a little,' " but the officer replied that the bottles she saw did not look like " 'a little.' " Father also made derogatory remarks to another Department staff member; he was upset, yelling, and slurring his words, and went from crying to very angry. The next day, he denied that law enforcement had come to his home and became upset when the social worker tried to remind him of what had occurred. [5]

[5] The Department filed a subsequent petition (§ 342) based on this incident, alleging Father had unaddressed mental health and/or substance abuse issues that rendered him

In light of this incident, the Department changed its dispositional recommendation to out-of-home placement with reunification services for the parents. The case plan was also modified to require Father to submit to a psychological evaluation and follow the recommendations for treatment and medication; participate in outpatient services once a week for substance abuse and follow the provider's treatment recommendation; and participate in alcohol and drug testing as directed.

On November 29, 2011, the court continued the disposition hearing to allow the Department to retain an ICWA-qualified Indian expert, as the Department was now seeking removal of the children from the parents' custody. (See § 361.7, subd. (c) [expert testimony required for foster care placement of Indian child].)

On December 22, 2011, the Department submitted a second addendum report. This report notes that Mother had moved out of the parents' home and had been living with her boyfriend but had been kicked out of his house and was living with Father at the Serenity Inn in Eureka. The report states that, on December 9, Mother was noted to have a faint odor of alcohol during a supervised visit but did not appear intoxicated. The same day, the social worker called Father and noticed he was slurring his words; Mother got on the phone and "spoke slowly and sounded like she may have been intoxicated," but denied she and Father had been drinking. On December 12, Mother told the social worker she and Father were thinking of getting back together; as she said this, her voice cracked, and she was shaking. She said she did not believe Father would be willing to go with her to counseling.[6] The same day, a social worker noted that Father seemed confused and increasingly angry, kept repeating himself, and did not know what day it was.

This report indicated Mother had acknowledged her substance abuse issues and was determined to remain sober, had shown an ability to remain sober for months before

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unable to provide care and safe supervision for the children (§ 300, subd. (b)). The Department later withdrew this petition.

[6] In her December 21 at-issue memorandum, Mother said she and Father had separated briefly but had reconciled and were participating in marital counseling.

relapsing, and had expressed willingness to engage in a treatment program, but the Department was concerned about her ability to remain sober. Due to the instability of the parents' relationship and housing and their substance use, the Department found return of the children would put them at substantial risk.

On the date set for disposition, December 28, 2011, the Department requested another continuance, stating the Indian expert's report was not ready because she had not been able to reach the tribe. The children's counsel reported visitation was going "extremely well" and "the children seem to be suffering because they're not with their parents," but he was disturbed by what Father said on November 15 and wanted a mental health assessment for Father before recommending the children's return. The court ordered an optional mental health evaluation for Father and continued the disposition hearing over the parents' objections.[7]

On January 4, 2012, the Indian expert, Angela Sundberg, submitted a declaration concluding removal of the children from the parents was necessary because continued custody was likely to cause the children serious emotional or physical damage due to the parents' substance abuse and domestic violence issues. Sundberg indicated she had spoken to the tribe director, who "is very concerned" about the substance abuse and domestic violence occurring in the children's presence; the tribe agreed the parents needed alcohol treatment and help with anger management before the children were returned to them; and alcohol abuse and domestic violence "are not consistent with the child rearing practices of the [tribe's] culture." Sundberg stated, "[I]t is clear that the children's best interest will be served by allowing the child[ren] to be placed out of the parent's [*sic*] home." She noted, however, that her review indicated the Department had not offered services to the family after the prior referrals and had not tried to contact the tribe in developing a case plan; she said this was not consistent with the ICWA's "active efforts" requirement.

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[7] There is no indication in the record that such an evaluation occurred.

In response to Sundberg's declaration, the Department filed a third addendum report, discussing its "additional contact with the parents . . . to prevent the breakup of this Indian family." This report noted that during prior referrals, the Department either provided the family with information regarding culturally appropriate services or verified that the family was already engaged in those services. The report also set forth the Department's attempts to contact the tribe from November 21, 2011, to January 6, 2012, and noted that the social worker called North Coast Children's Services to obtain information on transferring the children to the Head Start program of another Indian tribe, the Yurok tribe.

The Disposition Hearing

On January 12, 2012, the juvenile court held a contested disposition hearing. Sundberg testified that she interviewed the tribe's director and ICWA coordinator and, based on these interviews, had knowledge of the tribe's child-rearing practices. She "couldn't get ahold of" Mother and made one unsuccessful attempt to contact Father. Sundberg said she was not aware of the information in the third addendum report until the hearing. She said this information did not change her overall opinion regarding the Department's efforts, as she was "more concerned with the . . . Department not consulting the tribe regarding the case plan or . . . enrolling the children, having any cultural ties to the case whatsoever."

The children's counsel agreed with the Department's recommendation. The tribe did not make an appearance.

The juvenile court found the parents had complied with the case plan but had made minimal progress "toward alleviating, mitigating the causes necessitating intervention . . . ." The court found by clear and convincing evidence, based on the parents' substance abuse issues, domestic violence in the home, and "[F]ather's potential instability," that "continued custody by the Indian parent is likely to result in serious emotional or physical damage to the . . . children." In addition, the court found the Department had made reasonable efforts to prevent or eliminate the need for removal,

and "there's no reasonable means by which the children's physical health or emotional health can be protected without removing [them] from the parents."

The court found the children were Indian children. The court was "a bit critical" of the Department's efforts to keep the family together, stating "more could have been done" after Mother's April 2010 arrest. The court found, however, that active efforts had been made to provide culturally appropriate services and rehabilitative programs designed to prevent the breakup of the Indian family and that such efforts were unsuccessful. Still, the court did not find the Department had incorporated such services into the case plan or adequately solicited the tribe's input regarding the case plan and the appropriate placement; the court ordered the Department to consult the tribe regarding the children's placement and the case plan to determine "whether or not they have any criticism or suggestions on what might be a more culturally appropriate placement" and "to make sure they agree that those things are culturally appropriate."[8]

The court declared the children dependents of the juvenile court and authorized placement in a suitable foster care home. The court ordered reunification services for both parents and found the case plan was "appropriate and reasonable," but clarified that it was only temporary pending solicitation of input from the tribe. The court indicated its intent to set reviews to track the Department's efforts to contact the tribe, as well as the parents' progress.

The parents filed timely appeals from the disposition order.

DISCUSSION

I. *The Court's Finding the Children Were at Risk of Emotional or Physical Damage*

Mother challenges the juvenile court's finding under section 361.7, subdivision (c), that the parents' continued custody of the children was likely to result in

[8] The court said it wanted more direct contact with the tribe, follow-up regarding the children's enrollment in the tribe, recommendations from the tribe regarding cultural programs and the case plan, and a determination of whether the tribe recommended investigation with tribal members, including the children's extended family.

serious emotional or physical damage to the children.[9] She argues this finding is not supported by the evidence and the juvenile court "failed to institute the least restrictive alternative disposition." She maintains, "The evidence was insufficient to establish by clear and convincing evidence that the minors would be at risk of serious emotional or physical damage if returned to appellant's home under a family maintenance plan." Father joins in these arguments.

In evaluating these contentions, Mother maintains we must review the record "in the light most favorable to the trial court's order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on the clear and convincing evidence standard. [Citation.]" (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694-695, italics omitted.) The Department maintains we review the juvenile court's finding under the substantial evidence standard, which simply requires us to determine whether there is substantial evidence in the record to support the court's finding. (*In re M.B.* (2010) 182 Cal.App.4th 1496, 1506; see *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881 ["The 'clear and convincing' standard . . . is for the edification and guidance of the trial court and not a standard for appellate review "].) We need not decide this question, as we conclude the juvenile court's finding meets even the more onerous standard.

There is evidence that Mother had a significant substance abuse problem that had placed the children's physical safety at risk and traumatized them emotionally. Although she was dedicated to her sobriety since the children's detention, she had periods of relapse, and her sobriety was new.[10] Father, the parent to whom the children had been

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[9] Section 361.7, subdivision (c) provides: "No foster care placement . . . may be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, . . . that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

[10] There is evidence that Mother was drinking in December 2011. As the juvenile court correctly noted, "It is concerning when someone that is believed to have a significant alcohol problem consumes any amount of alcohol."

entrusted in the past when Mother was unable to care for them, had engaged in behaviors indicating he also had an untreated substance abuse problem and mental health issues, in addition to his anger management issues and violence. Incidents after the children were detained suggest that his anger was often out of control and he posed a continuing threat to the children and Mother. Thus, the record demonstrates that the parents were still struggling with the problems that led to the children's detention; new issues had arisen confirming that Father was too unstable to assume their care; and these problems were compounded by instabilities in the parents' housing situation and their relationship. On this evidence alone, a reasonable court could find by clear and convincing evidence that (1) return to the parents continued to present a risk of emotional and physical harm to the children; and (2) "there's no reasonable means by which the children's physical health or emotional health can be protected without removing the children from the parents." Sundberg also provided expert testimony reasonably supporting the conclusion that removal from the parents' custody was necessary to avoid emotional or physical damage to the children.

Mother challenges the inferences drawn by the juvenile court and the credibility of the expert's report, noting she "was not present or involved in the [November 15] incident in any manner." We will "not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or reweigh the evidence." (*In re M.B.*, *supra*, 182 Cal.App.4th at p. 1506.) We observe, however, that in deciding to remove the children from Mother, the court could properly consider evidence that she was once again residing with Father and that he posed a risk to them.

II. *The Court's Finding the Department Had Made "Active Efforts" Under the ICWA*

Appellants also contend the court erred in finding under section 361.7 that active efforts had been made to provide culturally appropriate services and rehabilitative programs designed to prevent the breakup of the Indian family.[11] "Whether active efforts

[11] Under section 361.7, "[A] party seeking an involuntary foster care placement of . . . an Indian child shall provide evidence to the court that active efforts have been made to

were made is a mixed question of law and fact. [Citation.] We can determine what services were provided by reference to the record. Whether those services constituted 'active efforts' within the meaning of section 361.7 is a question of law which we decide independently. [Citation.]" (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1286.)

Following a referral based on Mother's refusal of Public Health Nursing during her pregnancy with T.S., the Department confirmed the family was working with United Indian Health Services. After Mother's April 2010 arrest for child endangerment, the Department referred the family to Americorps, which sent Mother "information on AA groups, the McKinleyville FRC, Two Feathers, HCRC, and United Indian Health Services." The social worker also sent Mother a letter advising her of the importance of sobriety and fulfilling her court obligations. Mother "was involved in services provided by the community."

After the children were detained, the Department provided referrals for a substance abuse assessment, parenting classes, anger management counseling, and domestic violence programs. The Department also modified the case plan to address Father's substance abuse and mental health issues as soon as these problems were identified. In addition, the Department looked into the possibility of transferring the children from their Head Start program to one operated by another Indian tribe.

The juvenile court did not err in concluding the services discussed above constitute active efforts within the meaning of section 361.7. "What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers." (§ 361.7, subd. (b).) "The phrase 'active efforts,' construed with common sense and syntax [citation], seems only to

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provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." (§ 361.7, subd. (a).)

require that timely and affirmative steps be taken to accomplish the goal which Congress has set: to avoid the breakup of Indian families whenever possible by providing services designed to remedy problems which might lead to severance of the parent-child relationship. [Citations.]" (*Letitia V. v. Superior Court* (2000) 81 Cal.App.4th 1009, 1016, fn. omitted; see *In re Michael G.* (1998) 63 Cal.App.4th 700, 714 ["the standards in assessing whether 'active efforts' were made to prevent the breakup of the Indian family, and whether reasonable services under state law were provided, are essentially undifferentiable"]; *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1474-1475 [services will be found reasonable if the Department has "identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult", italics omitted].) The record demonstrates that the Department identified the problems that prevented the parents from providing safe and adequate care for their children, provided services addressing these problems, maintained regular contact with the parents, and adjusted their services and case plan as needed to address Mother's relapses and the new issues Father's behavior brought to its attention.

At least three of these services appear to relate specifically to the Indian culture—United Indian Health Services, Two Feathers, and the transfer to the Yurok tribe's Head Start, a program run by a different tribe. The record also demonstrates that the Department repeatedly attempted to obtain input from the Native Village of Kiana, with minimal response. On November 21, 2011, the social worker left voice mail messages for the tribe director and the ICWA coordinator identified in court documents; she then sent an email to the tribe identifying herself and her position and stating, "We are currently going through the court process with two children we have reason to believe are enrolled members of your tribe. ICWA-030[s] have been sent to you regarding these children. I would appreciate a call as soon as possible to discuss your interest in this family. Please call me as soon as possible." She received no reply to her email.

On December 2, 2011, the social worker again called the ICWA coordinator, who was not in. The social worker then called the tribe director to touch base and see if the tribe had received everything it needed for the case. The tribe director said she did not know and declined the social worker's phone number, as she was away from her office. The social worker explained that she had sent multiple emails to the tribe and each message had her contact information.

On December 16, 2011, the social worker spoke to Jacqueline Morris, who was also identified as the tribe's ICWA coordinator. Morris said the tribe wanted reunification but had found a relative placement for the children, their maternal grandmother in Kiana, Alaska. The social worker discussed her concerns about placing the children in Alaska during the reunification process.

On December 29, 2011, the social worker emailed the tribe, stating her phone calls had not been returned and notifying the tribe that the contested disposition hearing had been continued. The social worker provided information "on doing the court call in" and said the Indian expert needed to speak with a tribal representative. Shortly thereafter, Morris emailed the social worker, indicating she had sent information to the Indian expert and forwarded the Department enrollment applications for the children.

On January 6, 2012, another social worker called the tribe to discuss the case plan, but was told the ICWA coordinator was out of the office.

Thus, in addition to the formal notice it provided of the proceedings, the Department made at least six phone calls and sent multiple email messages to tribal representatives to involve the tribe in the dependency proceedings and obtain its input in developing a case plan and placement options. When the social worker was finally able to speak with a tribal representative on December 16, 2011, the tribe's placement recommendation became the concurrent plan for the children. The record indicates that Sundberg also had difficulty obtaining a prompt response from the tribe. When Sundberg eventually discussed the case with tribal representatives, she learned that the tribe desired reunification of the family and did not seek return of the children until the parents had received treatment for their substance abuse and anger management issues. Shortly after

Sundberg brought to the Department's attention that further efforts were needed to obtain the tribe's input regarding the case plan, the social worker attempted to contact the tribe to do so, but was unsuccessful. In light of this evidence, a reasonable court could find the Department made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

In arguing that the juvenile court's "active efforts" finding lacks support, Mother contends "The Department's efforts in this case have been . . . primarily passive," and relies on California Rules of Court, rule 5.484(c), which states "[E]fforts to provide services must include pursuing steps to secure tribal membership for a child . . . ." She has forfeited these contentions by failing to raise them at the disposition hearing.[12] (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502 ["a parent's failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court"].)

Mother also argues, "The Department's own expert found that active efforts under ICWA had not been provided." The juvenile court did not allow Sundberg to testify, however, regarding her opinion of whether the Department had made "active efforts" that met the ICWA requirement; Mother has not shown this was error. To the extent such evidence came in through Sundberg's report, the juvenile court was free to reject it and conclude that the efforts the Department made were "active efforts" that satisfied section 361.7.

Father contends the juvenile court's findings were inconsistent in that it "found that 'reasonable efforts' were made to prevent or eliminate the need for removal of the children from the parents, yet simultaneously found that 'active efforts' required by the ICWA had not resulted in an adequately-designed case plan." Father fails to note, however, that the court expressly found the case plan "appropriate and reasonable at this time to allow the [Department] to rectify the problems that brought the matter before the

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[12] We observe, in any event, that the record demonstrates the tribe notified the social worker on January 3, 2012, that it had sent enrollment applications to the Department for Mother to fill out—only nine days before the disposition hearing.

Court . . . ." We find no inconsistency between the court's "active efforts" finding and its desire that the Department continue its efforts to obtain additional tribal input. (See *In re Misako R.* (1991) 2 Cal.App.4th 538, 547 ["The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances"].)

III. *Father's Contention Reunification Services Were Not Tailored to His Needs*

Finally, Father contends the case plan adopted by the juvenile court was flawed because "the department had not taken into account [his] hearing disability, his functional illiteracy, and his communication problems, when recommending and providing reunification services to the family." Father did not raise this contention in the proceedings below and has forfeited the error alleged. (See *In re Dakota S., supra,* 85 Cal.App.4th at p. 502.)

DISPOSITION

The juvenile court's disposition order is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.